

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER CARNO,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA, FEDERAL
BUREAU OF PRISONS, WESTCHESTER
COUNTY JAIL, CORRECT CARE SOLUTIONS
INC., WARDEN OR SUPERINTENDENT OR
SHERIFF OF WESTCHESTER COUNTY JAIL,
MEDICAL DIRECTOR OR CEO OF CORRECT
CARE SOLUTIONS, ACTING DIRECTOR OF
FEDERAL BUREAU OF PRISONS,

Defendants.

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17-cv-7998 (NSR)

MEMORANDUM & ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff Alexander Carno (#73555-054) is an inmate housed at Allenwood Correctional Facility, a prison within the Federal Bureau of Prisons and is proceeding in this action *pro se*. Plaintiff initiated this civil rights action pursuant to 42 U.S.C. § 1983 for alleged violations of his constitutional rights by filing a Complaint on October 16, 2017. (*See* ECF No. 2.)

By Order dated May 14, 2018, this Court waived the pre-motion conference requirement and granted Defendants Correct Care Solutions, Inc. and the Medical Director or CEO of Correction Care Solutions' (the "CCS Defendants") leave to file a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (*See* ECF No. 30.) The CCS Defendants' motion is scheduled to be fully submitted and filed on September 11, 2018. (*See* ECF No. 46.) Defendants, the United States of America, the Federal Bureau of Prisons (collectively, the "Federal Defendants"), and the County

of Westchester (the "County Defendant") also sought leave to file motions to dismiss, and this Court granted that application on June 8, 2018. (*See* ECF No. 38.) Their respective motions, pursuant to Fed. R. Civ. P. 12(b)(6), are also scheduled to be fully submitted and filed by September 11, 2018. (*See id.*) By this time, all of the Defendants should have served their respective moving papers on Plaintiff, and the deadline for Plaintiff to serve his opposition to each of the motions is approaching. (*See* ECF Nos. 46, 38.)

Presently before the Court are three motions filed by Plaintiff on July 25, 2018 for the following relief: (1) compel discovery; (2) leave to file an amended complaint; and (3) an extension of the briefing schedule. For the following reasons, Plaintiff's motions are DENIED.

As indicated above, three motions have already been served on Plaintiff that require a response. Each of the Defendants' motions seek dismissal of the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Critically, motions of this nature require a court to assess the sufficiency of the pleadings. Consequently, the Court is constrained in its review to the factual allegations alleged in Plaintiff's Complaint and any documents attached thereto or incorporated by reference. *See Kopec v. Coughlin*, 922 F.2d 152, 154-55 (2d Cir. 1991) (noting that, on a 12(b)(6) motion to dismiss, "the Court must limit its analysis to the four corners of the complaint"); *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007) (courts may also consider documents attached to complaint as exhibits or those incorporated by reference). The Court will not be considering deposition testimony of any purported witnesses to the conduct alleged in Plaintiff's complaint. Moreover, as pre-answer motions are underway, this case has not yet proceeded to discovery. Consequently, Plaintiff's motion to compel discovery is denied as premature.

Additionally, in light of the fact that Defendants have already briefed their motions for dismissal, and Plaintiff's opposition to each motion is due on August 27, 2018, Plaintiff's motion

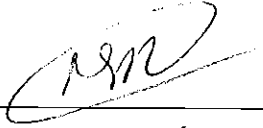
to file an amended complaint, (*see* ECF No. 49), is likewise denied pending the outcome of the Defendants' motions. Should the resolution of the motions result in a dismissal of Plaintiff's operative complaint, Plaintiff will be afforded leave to re-plead. Until such time, Plaintiff's October 16, 2017 Complaint will stand.

This Court likewise declines to extend the briefing schedule on any of the motions and hereby denies Plaintiff's motion for an extension. (*See* ECF No. 50.) Plaintiff has been afforded sufficient time to analyze and oppose the Defendants' motions. Plaintiff's motions (the subject of this Order) are being summarily resolved herein within days of their filing; such a short delay can hardly be viewed as an impediment to Plaintiff's ability to respond to the Defendants' 12(b)(6) motions before him.

In light of the foregoing, Plaintiff's motions to compel discovery, for leave to file an amended complaint, and for a continuance are hereby DENIED. The Clerk of the Court is respectfully requested to terminate the motions at ECF Nos. 47, 49, and 50. The Clerk of the Court is further directed to mail a copy of this Order to the Plaintiff at his address as listed on ECF.

Dated: July 30, 2018
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge